

BEFORE THE
BOARD OF EDUCATION
LA MESA – SPRING VALLEY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Employment Status of:

Christina Adamek, et al.,

OAH No. 2011030186

Respondents.

PROPOSED DECISION

Robert Walker, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter in La Mesa, California, on April 5, 2011.

Melanie A. Petersen, Attorney at Law,¹ represented the complainant, the superintendent of the La Mesa – Spring Valley School District.

The respondents are listed in exhibit A.

Fern M. Steiner, Attorney at Law,² represented the respondents listed in exhibit B.

Respondent Laura Marshall appeared in propria persona.

No appearance was made by or on behalf of John Ashley, Maryam Ayanti, Serena Conde, Karen Dingewall, Delyse Espineli, Kelly Rabasco, Maggie Schulman, Steven Sheeler, or Tira Wakayama.

The matter was submitted on April 5, 2011.

¹Melanie A. Petersen, Attorney at Law, 1 Civic Center Drive, San Marcos, California 92069.

² Fern M. Steiner, Attorney at Law, 401 West A Street, Suite 320, San Diego, California 92101-7911.

DEFAULT

As to John Ashley, Maryam Ayanti, Serena Conde, Karen Dingewall, Delyse Espineli, Kelly Rabasco, Maggie Schulman, Steven Sheeler, and Tira Wakayama, on proof of compliance with Government Sections 11505 and 11509, this matter proceeded as a default pursuant to section 11520.

FACTUAL FINDINGS

General Findings Concerning Statutory Requirements

1. Education Sections 44949 and 44955³ provide for two notices to be given in connection with terminating certificated employees. The first notice, which will be referred to as the Preliminary Layoff Notice, is given by the superintendent. It is given to the governing board and to the employees the superintendent recommends for layoff. The Preliminary Layoff Notice gives the board and the employees notice that the superintendent recommends that those employees be laid off. The superintendent must give the Preliminary Layoff Notice no later than March 15. There is no requirement that a governing board take any action in March. But while it is unnecessary, governing boards usually adopt a resolution ratifying the superintendent's recommendations. In this case, the superintendent delegated to Claudia Baker, Assistant Superintendent for Human Resources, the authority to serve Preliminary Layoff Notices. And Ms. Baker served those notices on behalf of the superintendent.

2. The second notice is a notice of a governing board's decision to terminate an employee. That notice is provided for in Section 44955 and must be given before May 15. That notice advises a teacher that the district will not require his or her services for the ensuing school year. That notice will be referred to as a Termination Notice.

3. In this case, not later than March 15, 2011, the superintendent notified the governing board and the respondents of the recommended that the respondents not be retained for the ensuing school year.

4. The Preliminary Layoff Notice stated the reasons for the recommendation. The recommendation was not related to respondents' competency.

5. A Preliminary Layoff Notice was delivered to each respondent, either by personal delivery or by depositing the notice in the United States mail, registered, postage prepaid, and addressed to respondent's last known address.

³ All references to the Code are to the Education Code unless otherwise specified.

6. The Preliminary Layoff Notice advised each respondent as follows: He or she had a right to a hearing. In order to obtain a hearing, he or she had to deliver a request for a hearing in writing to the person sending the notice. The request had to be delivered by a specified date, which was a date that was not less than seven days after the notice was served.⁴ And the failure to request a hearing would constitute a waiver of the right to a hearing.

7. Respondents either timely filed written requests for a hearing or obtained a waiver of their failure to file. An accusation was timely served on respondents. Respondents were given notice that, if they were going to request a hearing, they were required to file a notice of defense within five days after being served with the accusation.⁵ Respondents either filed timely notices of defense or obtained a waiver of their failure to file. All prehearing jurisdictional requirements were either met or waived.

8. The governing board of the district resolved to reduce or discontinue particular kinds of services. Within the meaning of Section 44955, the services are “particular kinds of services” that can be reduced or discontinued. The decision to reduce or discontinue these services was not arbitrary or capricious but constituted a proper exercise of discretion.

Services the District Intends to Reduce or Discontinue

9. The governing board of the district determined that, because particular kinds of services are to be reduced or discontinued, it is necessary to decrease the number of permanent or probationary employees in the district by 113 full time equivalents (FTE).

10. The particular kinds of services the governing board of the district resolved to reduce or discontinue are:

| | | |
|---------------------------|------|-----|
| Counseling Services | 5.9 | FTE |
| Elementary Teaching | 62.0 | FTE |
| Services, including Early | | |

⁴ Employees must be given at least seven days in which to file a request for a hearing. Education Section 44949, subdivision (b), provides that the final date for filing a request for a hearing “shall not be less than seven days after the date on which the notice is served upon the employee.”

⁵ Pursuant to Government Section 11506, a party on whom an accusation is served must file a notice of defense in order to obtain a hearing. Education Section 44949, subdivision (c)(1), provides that, in teacher termination cases, the notice of defense must be filed within five days after service of the accusation.

| | | |
|--------------------------|-----|-----|
| Admission Kindergarten | | |
| Elementary Teaching | 2.0 | FTE |
| Services for Primary | | |
| Language Program | | |
| (BCLAD) | | |
| English Learner | | |
| Resource Teaching | 2.0 | FTE |
| Services | | |
| Middle School Art | 2.0 | FTE |
| Teaching Services | | |
| Middle School English | 4.0 | FTE |
| Teaching Services | | |
| Middle School Industrial | .6 | FTE |
| Technology Teaching | | |
| Services | | |
| Middle School Math | 5.0 | FTE |
| Teaching Services | | |
| Middle School Physical | 4.6 | FTE |
| Education Teaching | | |
| Services | | |
| Middle School Science | 5.0 | FTE |
| Teaching Services | | |
| Middle School Social | 5.0 | FTE |
| Studies Teaching | | |
| Services | | |
| Middle School Spanish | 1.8 | FTE |
| Teaching Services | | |
| Middle School Teaching | 2.0 | FTE |
| Services for Primary | | |
| Language Program | | |

| | | |
|----------------------|-----|-----|
| (BCLAD) | | |
| Resource Specialist | 3.6 | FTE |
| (Mild/Moderate) | | |
| Teaching Services | | |
| Special Day Class | 2.0 | FTE |
| (Mild/Moderate) | | |
| Teaching Services | | |
| Special Day Class | 3.0 | FTE |
| (Moderate/Severe) | | |
| Teaching Services | | |
| Teaching Services, | 2.0 | FTE |
| Home Education | | |
| Teaching Services, | .5 | FTE |
| Home Tutor – General | | |
| Education | | |

Notices Rescinded

11. The district advised that it had rescinded the Preliminary Layoff Notices served on the following teachers:

Erin Bland
Katherine Halloran
Joe Malek
Ann McCafferty
Anna Packham
Jennifer Weber

12. Thus, as of the time of the hearing, these teachers no longer were parties to the proceeding.

USE OF TIE-BREAKING CRITERIA BASED ON THE CURRENT NEEDS OF THE DISTRICT AND STUDENTS

13. Pursuant to Section 44955, subdivision (b), the governing board of the district adopted criteria for determining the order of termination as among employees who first rendered paid service on the same day. Section 44955, subdivision (b), requires a district to

adopt such criteria and provides that the criteria are to be based on “needs of the district and the students” The district’s tie-breaking criteria are as follows:

The following rating system shall be applied in determining the order of termination of certificated employees who share the same first day of paid service in a vacant probationary position:

1. Prior Temporary, Probationary or Tenured Certificated Service in La Mesa-Spring Valley School District

A point value of +1 will be granted for each year of temporary, probationary or tenured certificated employment with the District that was rendered prior to the current seniority date/first date of paid service in a probationary position. This criterion applies to certificated employees who prove prior service with the District. A year of service is defined as *contract* service for seventy-five percent (75%) or more of the number of working days of any school year, including paid leave, but excluding leaves without pay.

2. Prior Contracted Certificated Employment Outside of the La Mesa-Spring Valley School District

A point value of +1 will be granted for each year of full-time temporary, probationary or tenured certificated employment with another school district prior to the current seniority date/first date of paid service in a probationary position with the La Mesa-Spring Valley School District. A year of service is defined as *contract* service for seventy-five percent (75%) or more of the number of working days of any school year, including paid leave, but excluding leaves without pay.

3. Earned Degrees Beyond the BA/BS Level

A point value of +1 will be added for each earned degree beyond the BA/BS level.

4. Teaching and/or Special Service Credentials

A point value of +1 will be added for each teaching and/or special service credential held, including Reading Certificate. (This does not include any English Learner Authorization, including CLAD Certificate.)

5. Supplementary Authorizations

A point value of +1 will be added for each supplementary authorization issued to the employee by the California Commission on Teacher Credentialing.

6. Lottery

In the event common day hires have equal qualifications based on application of the above criteria, the District shall break ties by utilizing a lottery conducted by the Assistant Superintendent, Human Resources. The lottery will be held in the presence of a representative from the La Mesa-Spring Valley Teachers Association.

14. Application of the tie-breaking criteria resulted in determining the order of termination solely on the basis of needs of the district and the students thereof.

DISTRICT'S INTENTION TO DEVIATE FROM SENIORITY (SKIPPING)

15. Pursuant to Section 44955, subdivision (d)(1), the governing board of the district resolved to deviate from terminating employees in the order of seniority, i.e., the board resolved to skip over teachers with a particular qualification and terminate more senior teachers who do not possess that qualification. A district may skip a junior employee only if employees with more seniority do not possess the special training and experience necessary to teach a specific course or course of study (specific course).

16. The district identified two courses as creating specific needs for personnel. The first is the Community Day School core instructional program in the subject areas of language arts, math, social studies, and science. The Community Day School is a school for students with academic, behavior, attendance, and emotional challenges. The second course is the Technology and Assessment Resource Teacher. As explained below, however, the district failed to prove that teachers with more seniority do not possess the special training and experience necessary to teach these courses.

17. The board resolved as follows:

WHEREAS, it shall be necessary to retain certificated employees who possess special training or experience, which other certificated employees with more seniority do not possess, to teach a specific course of study. Said training and experience includes possession of the following skills, knowledge and experience:

Possession of a Multiple Subjects credential issued by the California Commission on Teacher Credentialing, together with three (3) years teaching experience within the past five (5) school years in the District's Community Day School Alternative Program providing the core instructional program in the subject areas of language arts, math, social studies and science to students with academic, behavior, attendance and emotional challenges; and

Possession of a Multiple Subjects credential issued by the California Commission on Teacher Credentialing, together with two (2) years of experience serving as a Technology and Assessment Resource Teacher, including providing leadership in the area of education technology and providing support of the implementation of state testing, district testing and student academic data management

18. As noted above, Claudia Bender is the Assistant Superintended of Human Resources for La Mesa – Spring Valley School District. Ms. Bender applied the skipping criteria and skipped Rachel Guera, who presently holds the Community Day School position, and Kathryn Saballett, who currently is the Technology and Assessment Resource Teacher.

19. Ms. Bender testified as to the special training and experience necessary to teach each of the courses. Regarding the Community Day School position, Ms. Bender noted the board's skipping criteria, which specifies experience in working with children who have academic, behavior, attendance, and emotional challenges. The position requires a teacher who is adept at working with children who have extreme academic and emotional challenges. One must be adept at working with children who come from dysfunctional families; who have been abused; and who, themselves, may use alcohol and drugs. One must be able to work with social workers, the police, probation officers, and other people involved in the juvenile justice system. One must be able to intervene in crisis situations and diffuse problem situations calmly and patiently.

20. Regarding the Technology and Assessment Resource Teacher position, Ms. Bender noted the board's skipping criteria, which specifies experience in education technology and implementation of testing and student data management. The position requires one to be knowledgeable about determining which students qualify for special intervention. One must be able to provide the principals with the data they need regarding various test results. And one must provide reports to the State of California. Failing to provide reports to the state can have serious, negative consequences for the district.

21. Ms. Bender praised Ms. Guera and Ms. Saballett. Ms. Bender testified extensively regarding ways in which each met and exceeded the requirements of her position.

22. Ms. Guera's date of hire is August 13, 2007. The district may skip her only if employees with more seniority do not have the special training and experience necessary to teach in the Community Day School position. Emily Fleming, whose date of hire is August 9, 2004, and Deborah Kim Brown, whose date of hire is August 9, 2005, both contend that they have the special training and experience necessary to teach in the Community Day School position. If Ms. Fleming does have that special training and experience, the district may not terminate her while retaining Ms. Guera to render that service. If Ms. Fleming does not have that special training and experience but Ms. Brown does, the district may not terminate Ms. Brown while retaining Ms. Guera to render that service.

23. Ms. Saballett's date of hire is August 9, 2004. The district may skip her only if employees with more seniority do not have the special training and experience necessary to be the Technology and Assessment Resource Teacher. Koreen Corbett, whose date of hire is August 11, 2003, contends that she has the special training and experience necessary to be the Technology and Assessment Resource Teacher. If Ms. Corbett does have that special training and experience, the district may not terminate her while retaining Ms. Saballett to render that service.

24. Ms. Fleming holds a multiple subject credential with a credential in reading and a supplemental authorization in business. She has a crosscultural, language, and academic development (CLAD) certificate, which authorizes her to provide certain types of instruction to English learner students. She currently teaches English and sciences in a middle school. She previously taught first grade for three years and fourth grade for three years. She has confronted many behavioral issues. Her current principal observed that she was adept at dealing with behaviorally challenged students, and the principal tends to place those students in Ms. Fleming's classes. The principal has assigned Ms. Fleming the students with the most difficult attendance, emotional, and behavioral issues. In a class with 24 students, seven are special education students. In a class with 33 students, 12 are special education students. Ms. Fleming occasionally intervenes to deescalate situations in which students are in arguments. Ms. Fleming, as a volunteer in a program to support children whose parents have been incarcerated, mentors a sixth grade student whom Ms. Fleming taught when the child was in the first and fourth grades.

25. Ms. Brown holds a multiple subject credential with a supplemental authorization in mathematics. She is highly qualified in mathematics and has a CLAD certificate. She presently teaches mathematics in a middle school. From 1985 to 1990, Ms. Brown worked as a probation officer in the Orange County juvenile justice system. She worked in juvenile hall and was in charge of a unit that housed 10 to 18 juveniles. She provided counseling and helped residents with their homework. She often had to break up fights and deescalated tense situations. Ms. Brown moved to San Diego County and worked in a junior high school as a long term, site substitute. She taught seventh through ninth grades in an opportunity school – a school for students who, for various reasons, were not permitted to attend a regular school. For three years, Ms. Brown ran an after-school tutorial program for special education students who needed extra help with English, mathematics, or social studies. Ms. Brown moved to Denver and did substitute teaching for a few years. For three years she taught in a middle school in Colorado; she taught an integrated program without pull-outs for both regular and special education students. In 2005, she returned to San Diego and began her present position. Ms. Brown testified that she has the experience to teach in the Community Day School position; she said she could do very well there.

26. Ms. Corbett holds a single subject credential in health science with credentials in biology and chemistry and supplemental authorizations in geosciences and psychology. She has a CLAD certificate. She presently teaches science in a middle school. Before 2009, the district had a Technology Resource Teacher and a separate Assessment Teacher. From June of 2007 through June of 2009, Ms. Corbett was the Technology Resource Teacher. In

2009, the district combined the two positions and assigned Ms. Saballett to the combined position. As the Technology Resource Teacher for two years, Ms. Corbett developed a web site for teachers, trained teachers to implement their students' use of technology, and developed training for teachers. Along with another teacher, Ms. Corbett developed an electronic report card for the elementary grades. She coded the staff website at the district intranet. Each school had a lead teacher for technology, and Ms. Corbett met with each lead teacher twice a month. She also published a bimonthly technology newsletter for the district's teachers. Ms. Corbett compiles complex queries in Aeries, has used Edusoft, and is certified as a Micro Soft expert in ACCESS. Ms. Corbett testified that, on occasion, Ms. Saballett has asked for her help. Ms. Corbett explained that data based programs use tables of data. She said she has extensive experience in working with such programs, filtering information, and doing complex searches. Ms. Corbett testified that she is qualified to do the job of Technology and Assessment Resource Teacher. She said the district uses a few computer programs with which she is not familiar, but she said she could easily learn them in a couple of months.

27. As noted above, the district's skipping criteria provide for specified periods of experience. For the Community Day School position, the board specified "three (3) years teaching experience within the past five (5) school years in the District's Community Day School" For the Technology and Assessment Resource Teacher position, the board specified "two (2) years of experience serving as a Technology and Assessment Resource Teacher."

28. Last year, the district had exactly the same skipping criteria for the same positions, except that the specified experience for the Community Day School program was only two years, and the specified experience for the Technology and Assessment Resource Teacher position was only one year.

29. As of the end of the present year, Ms. Saballett actually will not have the two years of experience specified in the skipping criteria. She will be shy of that by one or two months.

30. When Ms. Bender applied the skipping criteria, she did not consider whether particular senior teachers had the special training and experience necessary to teach the courses.

31. Counsel for complainant contended that, with respect to the Technology and Assessment Resource Teacher position, the district needs continuity.

32. As will be explained below, it is found and determined that Ms. Brown and Ms. Corbett have the special training and experience necessary to teach in the positions the district identified for skipping.

SUMMARY OF FINDINGS REGARDING RETENTION OF EMPLOYEES

33. Except as to Ms. Brown and Ms. Corbett, with regard to respondents who are permanent employees, the district is not retaining any probationary employee to render a service that such a respondent is certificated and competent to render.

34. Except as to Ms. Brown and Ms. Corbett, with regard to respondents who are permanent employees, the district is not retaining any employee with less seniority than such a respondent has to render a service that the respondent is certificated and competent to render.⁶

35. Except as to Ms. Brown and Ms. Corbett, with regard to respondents who are either permanent or probationary employees, the district is not retaining any employee with less seniority than such a respondent has to render a service that the respondent's qualifications entitle him or her to render.⁷

LEGAL CONCLUSIONS

General Conclusions

1. Jurisdiction in this matter exists under Sections 44949 and 44955. All notice and jurisdictional requirements contained in those sections were satisfied.

2. Within the terms of Sections 44949 and 44955, the district has cause to reduce or discontinue particular kinds of services and to give Termination Notices to certain respondents. The cause relates solely to the welfare of the schools and the pupils.

Skiping

3. Section 44955, subdivision (d)(1), provides, in part, that a district may deviate from terminating teachers according to seniority if the "district demonstrates a specific need for personnel to teach a specific course" and demonstrates that a junior "employee has special training and experience necessary to teach that course . . . which others with more seniority do not possess."

⁶ Section 44955, subdivision (b), provides seniority protection for a permanent employee in terms of the services *the employee is "certificated and competent to render."*

⁷ Section 44955, subdivision (c), provides seniority protection for both permanent and probationary employees in terms of the services *an employee's "qualifications entitle [him or her] to render."*

4. Thus, Section 44955, subdivision (d)(1), requires that a district satisfy two conditions before it can consider skipping a junior employee. First, a district must demonstrate a specific need for personnel to teach a specific course. Second, a district must demonstrate that employees with more seniority do not have the special training and experience necessary to teach that course. Until a district demonstrates both of those things, there is no reason to consider whether a junior employee has the special training and experience necessary to teach the course. Whether a junior employee has the special training and experience necessary to teach the course is irrelevant unless a district has demonstrated that employees with more seniority do not have the special training and experience necessary to teach it.

5. In *Bledsoe v. Biggs* (2008) 170 Cal.App.4th 127, the third appellate district dealt with a skipping issue. Bledsoe was senior to teachers who were skipped. Bledsoe contended he had the special training and experience necessary to teach the course for which the junior teachers were retained. The court did not read Section 44955, subdivision (d)(1), as requiring one to first dispose of the issue of whether a senior teacher has the special training and experience necessary. The court first found that Bledsoe had, at least, the minimal training and experience necessary to teach the course. The court then reviewed the junior teachers' *special* training and experience and found that the junior teachers had special training and experience necessary to teach the course. Finally, the court reviewed Bledsoe's *special* training and experience and found that he did not have the special training and experience *that the junior teachers had*. The court said, "This evidence supports the finding that Bledsoe does not possess the special training and experience that Gates and Sormano possess." (*Bledsoe, supra*, 170 Cal.App.4th at pp. 135 - 142.)

6. There is an ambiguity in the court's conclusion that "Bledsoe does not possess the special training and experience that Gates and Sormano possess." Immediately prior to that, the court found that "Gates and Sormano have the 'special training and experience necessary to teach' [the course.]" (*Bledsoe, supra*, 170 Cal.App.4th at p. 142.) Thus, the court's conclusion concerning Bledsoe could be taken to mean that he did not possess the special training and experience necessary to teach the course. And if the conclusion concerning Bledsoe is read that way, it is perfectly consistent with the requirements of Section 44955, subdivision (d)(1).

7. If, on the other hand, one reads the court's conclusion concerning Bledsoe as meaning only that he did not have as much special training and experience as Gates and Sormano had, the court failed to make an essential finding. Before a district may skip a junior teacher, section 44955, subdivision (d)(1), requires the district to demonstrate that personnel "with more seniority do not possess" the "special training and experience necessary to teach [the] course"

8. A district may not use specified periods of experience in its skipping criteria simply to secure continuity in a position. Section 44955, subdivision (d)(1), allows a district to maintain continuity in a position only if the district demonstrates that employees with more seniority do not have the special training and experience necessary to fill the position.

Here, a few things support a conclusion that the specified periods of experience are being used not to identify a special experience that is necessary but to exclude consideration of senior teachers who might be well qualified to fill the positions. First, why would the specified periods change from one year to the next? Last year the board concluded that the Community Day School position needed someone with two years of experience; this year it is three years of experience. There was no evidence that the position changed. What has changed is that Ms. Guera now has three years of experience rather than two. Adding an additional year to the criterion simply allows the district to keep Ms. Guera and at the same time make it more difficult for a senior teacher to demonstrate that he or she is qualified. And the same is true of the Technology and Assessment Resource Teacher position. Last year it was one year experience; this year it is three years. Again, there was no evidence that the position changed. What has changed is that Ms. Saballett now has an additional year of experience. Adding an additional year to the criterion simply allows the district to keep Ms. Saballett and at the same time make it more difficult for a senior teacher to demonstrate that he or she is qualified. Another matter supports a conclusion that the specified periods are being used not to identify experience that is necessary but to exclude consideration of senior teachers who might be well qualified; as noted above, as of the end of the present year, Ms. Saballett actually will not have two years of experience. She will be shy of that by one or two months. If two years of experience actually was “necessary,” the district would not have skipped Ms. Saballett. And with regard to the Community Day School position, the criterion concerning experience is even more blatantly tailored to allow the district to retain Ms. Guera without regard to the qualifications of senior teachers; the three years of experience *has to have been in the district’s own Community Day School program*. And finally, there is Ms. Bender’s testimony that she did not even consider whether particular senior teachers had the special training and experience necessary to teach the courses. It is understandable that she would not have considered that. There was no need because the skipping criteria were designed to make such a consideration unnecessary.

9. The rule-making authority conferred on the governing boards of school districts is limited to the adoption of rules not in conflict with other statutory restrictions. (*Patton v. Governing Board* (1978) 77 Cal.App.3d 495, 501. “The governing board of each school district shall prescribe and enforce rules not inconsistent with law, or with the rules prescribed by the State Board of Education, for its own government.” (Section 35010, subd. (b).) Administrative regulations that alter or amend a statute or enlarge or impair its scope are void. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1389.) These rules apply to dismissal of tenured teachers. “[I]t is the function of the governing board of each district to suspend, demote or dismiss employees” as provided by statute. “To the extent [any rule or regulation] is contrary to these statutory provisions, it is void, for an administrative agency has no authority to enact rules or regulations which alter or enlarge the terms of legislative enactments.” (*California Sch. Employees Assn. v. Personnel Commission* (1970) 3 Cal.3d 139, 143-144)

10. Administrative practices that circumvent valid expectations of reemployment created by the tenure statutes are not permitted. (*Balen v. Peralta Junior College Dist.* (1974) 11 Cal.3d 821, 830-831; *Santa Barbara Federation of Teachers v. Santa Barbara High School Dist.* (1977) 76 Cal.App.3d 223, 230.)

11. Layoffs must proceed in accordance with the procedures prescribed by statute, which are to be strictly followed. (*Greer v. Board of Education* (1975) 47 Cal.App.3d 98, 105.)

12. Because subdivision (b) of section 44955 mandates that “the services of no permanent employee may be terminated . . . while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render,” junior employees may be given retention priority pursuant to section 44955, subdivision (d)(1), only if they possess special training and experience that their more senior counterparts lack. (*Alexander v. Board of Trustees* (1983) 139 Cal.App.3d 567, 571; *Moreland Teachers Assn. v. Kurze* (1980) 109 Cal.App.3d 648, 655.)

13. In interpreting the meaning of a statute, words must be given the meaning they bear in ordinary usage. (*In re Rojas* (1979) 23 Cal.3d 152, 155.) The meaning of an enactment should not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387; *Title Ins. & Trust Co. v. County of Riverside* (1989) 48 Cal.3d 84, 91.)

14. The “*special training and experience necessary*” language in section 44955, subdivision (d)(1), must be read in context with 44955, subdivision (b). When one does that, it appears that the word “necessary” substantially limits 44955, subdivision (d)(1). A district may require special training and special experience, but a district cannot require more of either than is “necessary” to teach the course. If “necessary” were not read in that limiting way, 44955, subdivision (d)(1), could be used to circumvent the seniority rights secured by 44955, subdivision (b). On the other hand, reading “necessary” in that limiting way harmonizes the language of the two subdivisions.

15. Thus, a district may not use skipping criteria that are not “necessary” to teach a course. Requiring a certain type of experience or a certain length of experience may be appropriate but only if it is shown to be “necessary.” There are a few decisions in which courts have approved of a requirement of prior experience. *Martin v. Kingfield School District* (1983) 35 Cal.3d 294, is an example. The case concerned the section 44956 preferred right of reappointment. An elementary school teacher who had been terminated asserted her right to be rehired to fill a new position as a middle school science teacher, a position for which she was credentialed. The district established a requirement of prior

experience as a middle school teacher and did not rehire Martin for the position. The case stands for the proposition that a district, in requiring prior middle school experience for a middle school science position, did not abuse its discretion.

16. Skipping a junior teacher and terminating a senior teacher instead of terminating the junior teacher is such a fundamental departure from the tenure system that the legislature's limitation of "necessary" should be strictly respected. A district should be allowed to terminate a senior teacher for not having "necessary" experience only if the experience actually is "necessary." And it is useful to consider that there was no evidence that, three years ago, Ms. Guera had had experience teaching in a Community Day School or that, two years ago, Ms. Saballett had had experience as a Technology and Assessment Resource Teacher.

17. In the present case, the district improperly used specified periods of experience to make it difficult for senior teachers to demonstrate that they had the experience necessary to teach the courses.

18. The evidence does not support a finding that the periods the district specified are, in fact, necessary.

19. By reason of the matters set forth in Findings 17, 19, and 24, it is determined that Ms. Fleming does not have the special training and experience necessary to teach in the Community Day School position. Ms. Fleming's experience has been with children who are in the regular school program. She has dealt with the students who, in that population, have the most difficult attendance, emotional, and behavioral issues. But there was no evidence as to how those students and their problems compare with a population of students who have been unable to function in the regular school program. Also, there was no evidence as to Ms. Fleming's ability to work with social workers, the police, probation officers, and other people involved in the juvenile justice system.

20. By reason of the matters set forth in Findings 17, 19, and 25, it is determined that Ms. Brown has the special training and experience necessary to teach in the Community Day School program. From 1985 to 1990, Ms. Brown worked as a probation officer in the Orange County juvenile justice system. She provided counseling and helped residents with their homework. She often had to break up fights and deescalate tense situations. Ms. Brown moved to San Diego County and worked as a substitute in an opportunity school – a school for students who, for various reasons, were not permitted to attend a regular school. For three years, Ms. Brown ran an after-school tutorial program for special education students who needed extra help with English, mathematics, or social studies. Ms. Brown testified that she has the experience to teach in the Community Day School position; she said she could do very well there. Ms. Brown's training and experience correspond very well with the special training and experience necessary for a teacher to fill the Community Day School position.

21. Because the district is retaining Ms. Guera to render a service for which Ms. Brown has the necessary special training and experience, the district may not terminate Ms. Brown.

22. By reason of the matters set forth in Findings 17, 20, and 26, it is determined that Ms. Corbett has the special training and experience necessary to be the Technology and Assessment Resource Teacher. The evidence shows that Ms. Corbett is extremely well qualified to deal with the technical requirements of the position. And one can infer from her accomplishments that she is a reliable and responsible person who can be trusted to provide reports to the State of California.

23. Because the district is retaining Ms. Saballett to render a service for which Ms. Corbett has the necessary special training and experience, the district may not terminate Ms. Corbett.

24. It is clear from the evidence that Ms. Guera and Ms. Saballett are excellent teachers. But because there are senior teachers who have the special training and experience necessary to fill the positions, Ms. Guera and Ms. Saballett's qualifications are not relevant.

Cause Exists to Terminate Certain Respondents

25. Cause does not exist to terminate Ms. Brown or Ms. Corbett.

26. With those exceptions, cause exists to give notice to the respondents that their services will not be required for the ensuing school year.

ORDER

1. As to Ms. Brown and Ms. Corbett, the accusation is dismissed.
2. The district may give Termination Notices to the remaining respondents.

Dated: April 22, 2011

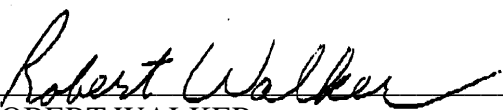

ROBERT WALKER
Administrative Law Judge
Office of Administrative Hearings

EXHIBIT A
RESPONDENTS
LA MESA – SPRING VALLEY SCHOOL DISTRICT
2011

1. Christina Adamek
2. Karen Alexander
3. Donna Allmann
4. John Ashley
5. Maryam Ayati
- 6.
7. Elizabeth
Batchelder
8. Michael Begley
9. Christina Benjamin
- 10.
11. Veronica Brand
12. Paloma Bravence
13. Nicole Brierley
14. Deborah Kim
Brown
- 15.
16. Lindsay Buck
17. Michelle
Castiglione
18. Krystal Castillo
19. Veronica Chalco
20. James Christopher
21. Serena Conde
22. Koreen Corbett
23. Nicole Demuth
24. Paul Devos
25. Kimberly Dilling
26. Karen Dingwall
27. Johanna Dorsha
28. Amy Dow
29. Joshua Dowell
30. Nicole Duncan
31. Lorena Escamilla
32. Delyse Espineli
33. Emily Fleming
34. Camden Flores
35. Silvia

- Frankenberger
- 36.
 37. Cathy Gaspar
 38. Abby George
 39. Megan Gonzales
 40. Jennifer Gordon
 41. June Greever
 42. Jennifer Griggs
 - 43.
 44. Gerald Hoffman
 45. Pamela Johnson
 46. Marsha Juarez
 47. Lauren Keane
 48. Brandie Keaveny
 49. Adrienne Korbel
 50. Melissa Kroeger
 - 51.
 52. Lindsay
Lewandoski
 53. Laramie Littig
 54. Amber Lockwood
 55. Joseph Lodico
 56. Elizabeth Lopez
 57. Amber Lunde
 - 58.
 - 59.
 - 60.
 61. Vita Marinesi
 62. Laura Marshall
 63. Heather Martin
 64. Natalie Martinez
 65. Marjorie Mayen
 - 66.
 67. Melissa Medina
 68. Brian Mendoza
 69. Heidi Meyers
 70. Kellie Mills
 - 71.
 72. Wendy Murphy
 73. Oscar Nava
 74. Margaret Neill
 - 75.
 - 76.
 77. Numila Palmer
 78. Karly Pecorella

79. Lalita Platfoot
80. Sheila Pourhashem
81. Kealy Prouty
82. Kelley Rabasco
83. Elizabeth Rackliffe
84. Jennifer Rambo
85. Jolene Reish
86. Meaghan Rice
87. Katherine
Richardson
88. Dana Riggs
89. Bethany Riley
90. Stephanie Rutledge
91. Maggie Schulman
92. Caren Sebok
- 93.
94. Steven Sheeler
95. Katherine Sheets
- 96.
97. Nicole Shellman
98. Suzanne Shubert
99. Francesca Shuruk
100. Karla Sierra
101. Scott Smith
102. Amy Symons
103. Nicole Tavalazzi
104. Kelly Taylor
105. JoAnn Thomas
106. Claudette Toland
- 107.
108. Tira Wakayama
109. Katharine Wardell
- 110.
111. Samantha Webster
112. Nichi Whitaker
113. Angela Wilson
114. Cary Zarzan
115. Jean Zelt

EXHIBIT B
RESPONDENTS MS. STEINER REPRESENTED
LA MESA – SPRING VALLEY SCHOOL DISTRICT
2011

- 116.Christina Adamek
- 117.Karen Alexander
- 118.Donna Allmann
- 119.
- 120.
- 121.
- 122.Elizabeth
Batchelder
- 123.Michael Begley
- 124.Christina Benjamin
- 125.
- 126.Veronica Brand
- 127.Paloma Bravence
- 128.Nicole Brierley
- 129.Deborah Kim
Brown
- 130.
- 131.Lindsay Buck
- 132.Michelle
Castiglione
- 133.Krystal Castillo
- 134.Veronica Chalco
- 135.James Christopher
- 136.
- 137.Koreen Corbett
- 138.Nicole Demuth
- 139.Paul Devos
- 140.Kimberly Dilling
- 141.
- 142.Johanna Dorsha
- 143.Amy Dow
- 144.Joshua Dowell
- 145.Nicole Duncan
- 146.Lorena Escamilla
- 147.
- 148.Emily Fleming
- 149.Camden Flores
- 150.Silvia

Frankenberger
151.
152.Cathy Gaspar
153.Abby George
154.Megan Gonzales
155.Jennifer Gordon
156.June Greever
157.Jennifer Griggs
158.
159. Gerald Hoffman
160. Pamela Johnson
161. Marsha Juarez
162. Lauren Keane
163. Brandie Keaveny
164. Adrienne Korbel
165. Melissa Kroeger
166.
167. Lindsay
Lewandoski
168. Laramie Littig
169. Amber Lockwood
170. Joseph Lodico
171. Elizabeth Lopez
172. Amber Lunde
173.
174.
175.
176. Vita Marinesi
177.
178. Heather Martin
179. Natalie Martinez
180. Marjorie Mayen
181.
182. Melissa Medina
183. Brian Mendoza
184. Heidi Meyers
185. Kellie Mills
186.
187. Wendy Murphy
188. Oscar Nava
189. Margaret Neill
190.
191.
192. Numila Palmer
193. Karly Pecorella

- 194. Lalita Platfoot
- 195. Sheila Pourhashem
- 196. Kealy Prouty
- 197.
- 198. Elizabeth Rackliffe
- 199. Jennifer Rambo
- 200. Jolene Reish
- 201. Meaghan Rice
- 202. Katherine
Richardson
- 203. Dana Riggs
- 204. Bethany Riley
- 205. Stephanie Rutledge
- 206.
- 207. Caren Sebok
- 208.
- 209.
- 210. Katherine Sheets
- 211.
- 212. Nicole Shellman
- 213. Suzanne Shubert
- 214. Francesca Shuruk
- 215. Karla Sierra
- 216. Scott Smith
- 217. Amy Symons
- 218. Nicole Tavolazzi
- 219. Kelly Taylor
- 220. JoAnn Thomas
- 221. Claudette Toland
- 222.
- 223.
- 224. Katharine Wardell
- 225.
- 226. Samantha Webster
- 227. Nichi Whitaker
- 228. Angela Wilson
- 229. Cary Zarzan
- 230. Jean Zelt